

Administrative arrangements for the purposes of the Bilateral Agreement between the Commonwealth and the State of Queensland for environmental assessment under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

A. Context

1. This agreement sets out the administrative arrangements (the **Arrangements**) under clause 24 of the Bilateral Agreement between the Commonwealth and the State of Queensland (**Queensland**) (the **parties**) for environmental assessment (the **Bilateral Agreement**) under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). It is the object of these Arrangements to facilitate the effective and efficient operation of the Bilateral Agreement.
2. In agreeing to these Arrangements, the parties recognise each other's legal responsibilities and note that no action implementing, or resulting from, these Arrangements can create legal obligations on either party or in any way fetter the statutory obligations or other decision-making of either party.
3. All terms defined in the EPBC Act, or under clause 44 of the Bilateral Agreement have the same meaning in this document.

B. Commencement

4. These Arrangements commence upon signature by both parties. The Departments administering these Arrangements are the Department of the Environment, the Queensland Department of Environment and Heritage Protection (**DEHP**), the Queensland Office of the Coordinator General (**OCG**) and the Queensland Department of State Development, Infrastructure and Planning for the Commonwealth and Queensland respectively.

C. Referral, assessment and approval arrangements

5. These Arrangements contain the processes agreed to by the parties for considering the referral of proposed actions, conducting assessments and making approval decisions, and monitoring and complying with conditions on approvals (**Attachment 1**).
6. If the proposed action, or part thereof, falls within the boundary of a strategic assessment, or is potentially covered by a 'class of actions' under a strategic assessment, the parties will refer to the administrative arrangements under the *Strategic Assessments: Policy Statement for EPBC Act Referrals* for any project referred under the EPBC Act
7. Noting clause 12.2 of the Bilateral Agreement for cross-jurisdictional assessments, the parties agree to consult with affected jurisdictions, and follow the procedures provided in **Attachment 1**.

D. Request for advice to the Independent Expert Scientific Committee on Coal Seam Gas (CSG) and Large Coal Mining Development

8. Where a request for advice to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (**IESC**) is required under the EPBC Act, Queensland will prepare a draft joint request for advice that will address identified gaps in scientific knowledge and information to inform the assessment of the relevant action's impacts on

water resources, for comment from the Commonwealth as soon as practicable, at commencement of the public notification period for the assessment documentation. This is to allow for the legislated two months for return of the IESC's advice.

E. Request of advice from Commonwealth agencies

9. Noting clause 18.3 of the Bilateral Agreement, where the relevant Queensland Department seeks advice on relevant matters from Commonwealth agencies, the parties agree to follow the procedures set out in **Attachment 1**.
10. If the *Great Barrier Reef Marine Park* controlling provision is triggered or if a proposed action occurs in the Marine Park, the parties agree that the MoU between the Department of the Environment, Water, Heritage and the Arts (now known as Department of the Environment) and the Great Barrier Reef Marine Park Authority (GBRMPA) will be followed at the equivalent stages set out in the procedures at **Attachment 1**.

F. Project management and monitoring

11. The parties will establish a Senior Officers' Committee and agree to the terms of reference and membership of the Committee within 3 months of signing these Arrangements.
12. Consistent with clauses 10 and 11 of the Bilateral Agreement, the parties will take steps to improve the efficiency and effectiveness of their own assessment processes. To facilitate this, the parties will pursue active, coordinated project management for major projects where both Commonwealth and Queensland assessment and approval responsibilities are involved. The parties agree that representatives at Director/Assistant Secretary level from the Department of the Environment and equivalent representatives from relevant Queensland Departments will hold (at least) bi-monthly project management meetings to:
 - (by exception) report of projects through the assessment to approval phase, including transitioning projects to the Bilateral Agreement;
 - monitor progress made to implementing the commitments made in the Bilateral Agreement to improve the efficiency and effectiveness of their own administrative processes to the greatest extent possible;
 - update any of the agreed templates under these Arrangements;
 - communicate any reviews, changes made to or development of guidance documents, policies, plans and legislation relating to Matters of National Environmental Significance (MNES) and the operation of the Bilateral Agreement;
 - consult on changes that could improve the operation of the Bilateral Agreement and these Arrangements;
 - exchange Information;
 - promote the use of an outcome-based approach to project approvals;
 - deliver greater up-front guidance to industry where and when available;
 - align assessment processes not specified in Schedule 1 of the Bilateral Agreement to these Arrangements, where possible; and

- Provide support through training and development and Commonwealth Information to build capacity of relevant Queensland Department assessment officer to undertake commitments made in the Bilateral Agreement.

G. Out posting of officers

13. The parties agree to provide opportunities for the temporary exchange (out posting) of officers experienced in environmental assessments under the Bilateral Agreement. Out posted officers will be funded by, and continue to report to, their employer organisations.
14. The key roles of out posted officers will be to:
 - assist with improving the efficiency and effectiveness of environmental assessments under the Bilateral Agreement;
 - promote common understanding between the parties about assessment requirements under legislation administered by each jurisdiction; and
 - facilitate transition to the Approvals Bilateral Agreement.
15. Noting clause 11 (d) of the Bilateral Agreement, the proposed arrangements for 2014 are to:
 - continue the current out posting of a Department of the Environment officer to OCG until at least June 2014;
 - consider potential OCG officer out posting to Department of the Environment;
 - enable short term placements of Department of the Environment officers (up to approximately one week at a time) to the relevant Queensland department as required to assist with specific assessment tasks; and
 - consider one or more out posted Department of the Environment officers to Queensland in the second half of 2014, to be located in the DEHP and/or OCG.

H. Dispute resolution

16. In accordance with clause 30 of the Bilateral Agreement, the parties will attempt to settle any dispute that arises between them by negotiation between officers, and if necessary, discussions should be escalated with a clear intention of resolving matters efficiently. The Senior Officers' Committee will have a key role in conflict resolution.

I. Review

17. Under section 65 of the EPBC Act the Commonwealth Minister will direct a review of the operation and effectiveness of the Bilateral Agreement against the objects of the Agreement at least once every five years jointly by the parties, at their own costs. The Senior Officers' Committee may issue a Terms of Reference for the review. The Commonwealth Minister must publish the outcomes of the review.
18. If an issue or matter regarding the operation of the Bilateral Agreement has been escalated through to the Senior Officers' Committee, by either party or jointly by respective project managers, the Senior Officers' Committee may request an unscheduled review be undertaken. This may be within the five year review period.
19. These Arrangements may be jointly reviewed at the request of either Party, or the Senior Officers' Committee.

Attachment 1

Administrative Arrangements to streamline the referral process (clause 16 of the Bilateral Agreement) and the assessment process (clauses 18 and 19 of the Bilateral Agreement) to ensure that the requirements of the Bilateral Agreement are administered efficiently

1. Pre-referral stage

Where an action comes to the attention of either party, and it appears that the action may be a controlled action and subject to environmental assessment under the Bilateral Agreement, the parties agree to consult before statutory referral or state application procedures commence, where this is practicable. Consultations will be conducted with a view to streamlining the referral or state application process for proponents and simultaneously satisfying the environmental assessment requirements of both the Commonwealth Government and the Queensland Government.

- 1.1. Following an enquiry to the Department of the Environment regarding a new proposal in Queensland, the Department of the Environment contacts EHP to advise of the enquiry and determine whether the proposed action has been referred to Queensland.

How: email	To: Business Entry Point	Email: eis@ehp.qld.gov.au
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- 1.2. Following an enquiry to DEHP regarding a new proposal which appears likely to impact on MNES, DEHP contacts Department of the Environment to advise of the enquiry and determine if the proposed action has been referred to the Department of the Environment.

How: email	To: Referrals Gateway	Email: epbc.referrals@environment.gov.au
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- If under step 1.2, it is determined that the proposal has not been referred to the Department of the Environment then DEHP will advise the proponent of their responsibilities under the EPBC Act by directing them to the online Fact Sheet on the EPBC Act.
- If a proponent seeks a pre-referral meeting with either party, that party will recommend that the other party attend the pre-referral meeting, if the Bilateral Agreement is likely to apply.
- The relevant Queensland Department may also consider referring the proposal to the Commonwealth Minister under Section 69 of the EPBC Act at this point, if the delay in a referral to the Commonwealth will impact on Queensland's ability to conduct an assessment in accordance with the requirements specified in Schedule 1 of the Agreement.

2. Referral Stage

2.1. Department of the Environment provides DEHP the opportunity to comment on referral.

How: letter (and email copy)	From: Director, Referrals Gateway Section
	To: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
Comments to be provided to Department of the Environment within 10 business days of letter being signed.	

- DEHP may advise at this stage whether the proposed action is to be assessed in accordance with a class of actions under Schedule 1 of the Bilateral Agreement. If DEHP advises the Department of the Environment that the proposed action will not be assessed in accordance with a class of actions in Schedule 1, then the Bilateral Agreement does not apply.

2.2. The Department of the Environment may discuss with the relevant Queensland Department the likely MNES that may be triggered for further assessment, to enable the relevant Queensland Department to provide informed advice within the referral comment period in step 2.1.

How: phone	From: nominated Director, Department of the Environment
	To: Director, relevant Queensland Department

2.3. Department of the Environment notifies DEHP of controlled action (CA) decision.

How: letter (Referral Decision Brief to be attached)	Entity nominated in Bilateral Agreement	Delegate
	Commonwealth Environment Minister	From: Assistant Secretary, Department of the Environment
	Queensland Environment Minister	To: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
Action within 10 business days of controlled action decision.		

- If DEHP will not be conducting the assessment, DEHP will send this notification to the relevant Queensland Department.

2.4. The Commonwealth Minister, or delegate, may determine that a particular action is not within a class of actions under the Bilateral Agreement.

How: letter	Entity nominated in Bilateral Agreement	Delegate
	Commonwealth Environment Minister	From: Assistant Secretary, Department of the Environment
	Queensland Environment Minister	To: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection

- Note this step cannot apply after the Queensland Minister has given notice that the Bilateral Agreement will apply.

2.5. If not already completed at step 2.1, DEHP responds to the notice of controlled action advising Department of the Environment whether the proposed action will be assessed under Schedule 1 of the Bilateral Agreement.

How: letter	Entity nominated in Bilateral Agreement	Delegate
	Queensland Environment Minister	From: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	Commonwealth Environment Minister	To: Nominated Director
Action within 10 business days of receipt of letter in step 2.3.		

- If DEHP advises Department of the Environment that the proposal will not be assessed in accordance with a class of actions in Schedule 1 then the Bilateral Agreement does not apply. The Department of the Environment will make a decision on assessment approach.

Bilateral Agreement assessment commences.

3. Assessment stage – Preparation of the Terms of Reference

3.1. Department of the Environment and relevant Queensland Department contact officers exchange details, if not already done during the referral stage.

How: email	Who: relevant Queensland Department
	Who: Nominated Director
Parties make best endeavours to action within 5 business days of receipt of advice under step 2.3	

3.2. Department of the Environment and the relevant Queensland Department prepare a Proponent Service Delivery Charter (PSDC). The parties commence preparation of the PSDC in consultation with the proponent, including:

- providing respective agencies' contact officer roles and responsibilities and proponent contact details;
- informal and formal communication points, including appropriate site visit schedule opportunities for tripartite meetings at key stages of the assessment;
- likely timeframes for assessment milestones to be consistent with the time frames set out in this document, including proponents' proposed delivery of assessment documentation;
- identifying the need to contact Commonwealth agencies with relevant expertise on relevant MNES; and
- potential scheduling regarding a request for advice from the IESC, if required.

How: teleconference/meeting	Who: Relevant Queensland Department Contact Officer
	Who: Department of the Environment contact officer through nominated Director
	Who: Proponent
If required, parties to make best endeavours to action within 5 business days of receipt of contact officer details to prepare a PSDC and consult with the proponent on key timeframes	

3.3. Draft Terms of Reference (ToR) for assessment of a proposed action is prepared. The relevant Queensland Department will prepare a draft ToR for the assessment of the proposed action. The draft ToR will incorporate the standard ToR for EPBC Act requirements in accordance with clause 18.5 of the Bilateral Agreement. The relevant Queensland Department contact officer notifies the Department of the Environment contact officer when the public comment period begins for the draft ToR.

How: email or phone call	From: relevant Queensland contact officer
	To: Department of the Environment contact officer

3.4. Department of the Environment provides a response to relevant Queensland Department if necessary, during the public notification period.

How: as required by public notice	From: Department of the Environment Contact Officer through nominated Director
	To: As required by Public Notice
Action within stated comment period (usually 4 week public notification period)	

- The parties may also seek advice from Commonwealth agencies with relevant expertise when preparing draft ToR for a proposed action.
- If Queensland believes that the Commonwealth's standard ToR for EPBC Act Requirements cannot be incorporated in their entirety, within a projects' ToR, the relevant Queensland Department must notify the Department of the Environment in writing at this point. In exceptional circumstances, either or both parties may escalate the matter in accordance with clause H of these Arrangements.

How: letter/email	Entity nominated in Bilateral Agreement	Delegate
	From: relevant Queensland Minister	From: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment

3.5. Final ToR. Once the ToR for a proposed action are finalised, the relevant Queensland Department provides the Department of the Environment with the final ToR.

How: email (identify web location)	From: relevant Queensland Department Contact Officer
	To: Department of the Environment contact officer
Action within 5 business days of ToR being finalised	

4. Assessment stage – preparation of the assessment documentation

4.1. Draft assessment documentation¹. The relevant Queensland Department will notify the Department of the Environment when the proponent has submitted adequate draft assessment documentation. The relevant Queensland Department will request the proponent to provide one hard copy of the draft assessment documentation to the Department of the Environment inviting comment on whether the draft assessment documentation adequately addresses impacts on MNES.

How: email (or hard copy depending on size of documentation)	From: relevant Queensland Department Contact Officer
	To: Department of the Environment contact officer

- Draft assessment documentation will be provided to Department of the Environment for comment on **adequacy**² prior to the public notification period.
- On a case by case basis contact officers to discuss whether relevant Queensland Department provides the Department of the Environment draft assessment documentation prior to adequacy check to aid early consideration.

4.2. Department of the Environment responds to relevant Queensland Department on adequacy of the draft assessment documentation.

How: email (or letter)	From: Department of the Environment contact officer through Nominated Director	
	To: relevant Queensland Department contact officer	
Department of the Environment may seek line area advice on draft assessment documentation during this period.	Heritage, Water (non-wetlands), Ramsar, Marine, GBRMPA, Parks, Supervising Scientist	
Action within 15 business days of receipt by Department of the Environment of the draft assessment documentation, <u>prior to</u> the public notification period. To assist relevant Queensland Department meet its timelines, depending on complexities, Department of the Environment consider responding sooner (to be agreed in the PSDC).		

- The relevant Queensland Department provides comments received from the Department of the Environment to the proponent prior to public notification.
- The relevant Queensland Department may provide a copy of any revised draft assessment documentation from the proponent that addresses comments provided under 4.2 and Queensland agency comments (if any) where comments are relevant to MNES and matters of substance to Department of the Environment for information.

¹ The *Environmental Protection Act 1994* (QLD) uses the terminology 'submitted EIS' when referring to the EIS documentation lodged by the proponent.

² The Department of the Environment will advise the relevant Queensland Department whether the draft assessment documentation adequately addresses the requirements of the ToR, where it applies to MNES.

4.3. Public notification period. The relevant Queensland Department will notify the Department of the Environment that the assessment documentation has been placed on exhibition and the timeframe for public comment.

How: email / phone call (web location of documentation)	From: relevant Queensland Department Contact Officer
	To: Department of the Environment contact officer
Action by next day.	

- Department of the Environment will conduct a **merit**³ review of the documentation and provide comments to the relevant Queensland Department
- A copy of the draft Assessment Documentation released for public comment will be provided at the beginning of the public comment period, as will any subsequent versions as soon as practicable after the time it is provided to Queensland.
- When required under the EPBC Act, a request for advice will typically go to the IESC at this point (advice is received within two months of the date of the request).

4.4. The Department of the Environment may provide comments to the relevant Queensland Department on the assessment documentation once the public notification period has commenced.

How: as required by public notice	From: Department of the Environment Contact Officer through nominated Director
	To: As required by Public Notice
Action within stated comment period	

4.5. Response to submissions. Proponent prepares a response to submissions and provides this to the relevant Queensland Department. The relevant Queensland Department provides this response to Department of the Environment contact officer.

How: email/letter	From: relevant Queensland Department contact officer
	To: Department of the Environment contact officer
Action within 5 business days of receiving the response from the proponent	

- If Queensland believes the Commonwealth's requirements cannot be met, the relevant Queensland Department must notify the Department of the Environment in writing at this point. In exceptional circumstances, either or both parties may escalate the matter in accordance with clause H of these Arrangements.

³ The Department of the Environment will determine if the assessment documentation provides sufficient information for the Commonwealth Minister (or Delegate) to fully assess the impacts to MNES and to make an informed decision whether or not to approve the proposed action and, if so, under what conditions.

How: letter/email	Entity nominated in Bilateral Agreement	Delegate
	From: relevant Queensland Minister	From: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment

5. Assessment stage – Preparation of the Assessment Report

5.1. Draft Assessment Report. The relevant Queensland Department prepares a draft Assessment Report, which may include proposed recommended conditions for MNES and proposed offsets if required, and invites the Department of the Environment to comment on the adequacy of the draft Assessment Report as it relates to impacts on MNES.

How: letter/email	Entity nominated in Bilateral Agreement	Delegate
	From: relevant Queensland Minister	From: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment

- The parties may agree to arrange short term placements co-located with the relevant Queensland Department officers to assist with the preparation of the draft Assessment Report.
- Queensland may consult/seek advice from Commonwealth agencies with expertise on relevant MNES. In the first instance this should be requested through the Department of the Environment nominated Director.

5.2. Department of the Environment responds to draft Assessment Report.

How: email	From: Department of the Environment contact officer through nominated Director
	To: Director, relevant Queensland Department
(Unless agreed otherwise) action within 10 business days of receipt by Department of the Environment of draft Assessment Report	

- If the Commonwealth Environment Minister requires further Information, it will be specified as part of the comments.
- If the Department of the Environment considers that additional conditions are necessary to ensure the protection of MNES, the Department of the Environment will notify the relevant Queensland Department at this point.
- If Queensland believes the Commonwealth's requirements for, and the adequacy of information contained in the draft Assessment Report cannot be met, the relevant Queensland Department must notify the Department of the Environment in writing at this point, seeking the Commonwealth to complete this work in accordance with clause 18.6 of the Bilateral Agreement. In exceptional circumstances, either or both parties may escalate the matter in accordance with clause H of these Arrangements.

How: letter/email	Entity nominated in Bilateral Agreement	Delegate
	From: relevant Queensland Minister	From: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment

5.3. Queensland Department considers the Department of the Environment comments and finalises the Assessment Report, including any recommended outcome focused conditions.

- The relevant Queensland Department and Department of the Environment may arrange for further consultation, including (additional) short-term assessment officer placements, to assist in addressing issues raised by Department of the Environment.
- Queensland must notify the Department of the Environment prior to finalising the Assessment Report in accordance with clause 18.7(c), (unless all issues previously raised by the Department regarding the draft Assessment Report have been addressed).

How: email	From: relevant Queensland Director.
	To: Department of the Environment contact officer through nominated Director
Action at least 7 days prior to finalising the Assessment Report	

5.4. Agreement on recommended MNES conditions. Unless resolved in step 5.2, the relevant Queensland Department and the Department of the Environment seek to agree on the proposed recommended MNES approval conditions.

How: letter	From: Department of the Environment contact officer through nominated Director
	To: Director relevant Queensland Department

- The parties should use best endeavours to negotiate an agreed single set of outcome focused MNES conditions for an approval of an action. Where practicable, the agreed conditions should be included in the final Assessment Report.
- If the parties cannot reach agreement at officer level, in exceptional circumstances disputed matters should be escalated and, where necessary, addressed by the Senior Officers' Committee.

5.5. Final Assessment Report. The relevant Queensland Department provides the Final Assessment Report, containing a specific chapter on relevant MNES to the Department of the Environment. Further information on social and economic matters may also be provided, in addition to that contained in the Assessment Report.

How: letter	Entity nominated in Bilateral Agreement	Delegate
	From: Coordinator-General or relevant Queensland Minister, or delegate.	To: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment
Final Assessment Report, and any additional information on social and economic matters, is provided on the day that the final Assessment Report is provided to the proponent.		

- The relevant Queensland Department should submit, as part of the final assessment report, a specific section or chapter that outlines how the advice of the IESC has been considered/addressed, for consideration by the Commonwealth Minister, so as to meet the requirement at section 136(2)(fa) of the EPBC Act.

5.6. Queensland provides copies of any further information about the relevant impacts of the action on MNES that is not contained in the Final Assessment Report.

How: letter	Entity nominated in Bilateral Agreement	Delegate
	From: Coordinator-General or relevant Queensland Minister, or delegate.	To: Director, Statewide Environmental Assessments, Department of Environment and Heritage Protection
	To: Commonwealth Minister	To: Assistant Secretary, Department of the Environment
Within 10 business days after the date on which the Assessment Report being provided to the Queensland approval authority.		

5.7. Department of the Environment receives and considers final Assessment Report.

- If the Commonwealth Environment Minister uses any Information described in section 136(2)(e) of the EPBC Act in deciding whether to approve the taking of a proposed action, this Information will be provided to the relevant Queensland Minister at this point.

6. Approval stages

6.1. Proposed Approval Decision. The Commonwealth Environment Minister or delegate, consults with the relevant Queensland Department, any relevant Commonwealth Ministers and the proponent on proposed approval decision, which may include consultation on additional EPBC Act conditions (if any).

How: letter (and email)	From: Commonwealth Minister, or Delegate
	To: The Coordinator-General or the relevant Queensland Minister
	Cc by email to the relevant Queensland Director

6.2. The relevant Queensland Department provides comments to Department of the Environment on the proposed approval decision and additional EPBC Act conditions in response to step 6.1, as required.

How: letter/email	From: the relevant Queensland Director
	To: Nominated Director, Department of the Environment
Action within 10 business days of receipt of a request for comments under step 6.1	

6.3. The Commonwealth Environment Minister, or delegate, finalises approval decision and notifies proponent and Queensland Environment Minister.

How: email (web address)	From: Commonwealth Minister, or Delegate
	To: The Coordinator-General or the relevant Queensland Minister
	Cc by email to the relevant Queensland Director

- Compliance monitoring and auditing factsheet provided to the proponent.

6.4. Department of the Environment and relevant Queensland Department identify appropriate contact officers that will be responsible for post approval activities, including compliance monitoring of conditions which relates to a MNES.

How: email	Who: Director, Post Approval Monitoring, Compliance and Enforcement Branch, Department of the Environment
	Who: relevant Queensland Department Post Approval Monitoring Officer

The parties should consult with each other:

- before either party varies a condition of approval that relates to a Matter of NES, and once any such variation has been made;
- if the same approval condition for both Commonwealth and Queensland approval has been used and efficiencies can be gained by cooperative monitoring of conditions; and
- where there has been a breach of an approval condition that relates to, or affects, a MNES.



Barry Broe
Coordinator-General

Date: 23-5-14.



David Edwards
Director-General, Department of State
Development, Infrastructure and Planning

Date: 22/5/14



Jon Black
Director-General, Department of Environment and
Heritage Protection

Date: 21 May, 2014



Dean Knudson
First Assistant Secretary,
Environment Assessment and Compliance Division,
Department of the Environment

Date: 29-5-14

